

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF CALIFORNIA

3
4 IN RE: INCRETIN-BASED
5 THERAPIES PRODUCTS
6 LIABILITY LITIGATION

7 *This Document Relates to All Cases*

Case No. 13-md-2452-AJB-MDD

CASE MANAGEMENT ORDER
REGULATING DISCOVERY AND
OTHER PRETRIAL PROCEEDINGS
CONCERNING VICTOZA CASES

Judge: Hon. Anthony J. Battaglia

Magistrate: Hon. Mitchell D. Dembin

10 After reviewing the Parties Motion regarding the entry of a case
11 management order regulating discovery and other pretrial proceedings, and
12 the Parties' proposed Order related thereto, and for good cause appearing,
13

14 **IT IS HEREBY ORDERED:**

15 1. On or before **September 4, 2015**, the PSC and Novo Nordisk,
16 Inc. (the "Parties") shall submit to the Court a proposed Case Management
17 Order identifying the exact process, timing, and other parameters for
18 selecting and trying bellwether cases. The first two bellwether trials shall be
19 on the dates discussed herein and will solely involve claims related to use of
20 Victoza.¹

21 2. All Plaintiffs who have served their Plaintiff Fact Sheet by
22 **October 9, 2015** will be part of the bellwether eligible pool of cases², unless
23 Counsel for any such Plaintiff notifies Defendants' counsel on or before
24 **October 16, 2015** that a particular Plaintiff is unable or otherwise unwilling

25 ¹ To the extent that deadlines in this CMO conflict with deadlines provided in previous case
26 management orders, the deadlines provided for herein shall control.

27 ² In light of the extremis nature of many of the Plaintiffs in this MDL, the Court will allow the
28 PSC to put forth later filed Plaintiffs and/or substitute bellwether discovery selections to ensure
Plaintiffs are able, if they so choose, to put forth representative Plaintiffs who will be able to
testify live at trial.

1 to serve as a bellwether trial plaintiff.

2 3. On or before **January 29, 2016**, the Parties shall identify in
3 writing six (6) representative³ Plaintiffs, or three (3) bellwether candidates
4 per side, that shall serve as bellwether discovery plaintiffs. The process and
5 mechanisms of designations and selections of bellwethers shall be done in
6 accordance with the CMO that is submitted on or before September 4, 2015,
7 as set forth in paragraph 1, above.

8 4. Between **January 29, 2016** and **August 19, 2016**, case-specific
9 bellwether discovery shall take place, with a maximum of five (5)
10 depositions per side for each case. Discovery of Plaintiffs beyond these
11 depositions as part of case-specific core discovery may be permitted only
12 upon agreement of the parties or with leave of Court for good cause shown.

13 5. All non case-specific fact discovery shall be completed on or
14 before **August 19, 2016**. "Completed" means that all discovery under Rules
15 30-36 of the Federal Rules of Civil Procedure, and discovery subpoenas
16 under Rule 45, must be initiated a sufficient period of time in advance of the
17 cut-off date, *so that it may be completed* by the cut-off date, taking into
18 account the times for service, notice, and response as set forth in the Federal
19 Rules of Civil Procedure. All disputes concerning fact discovery shall be
20 brought to the attention of the Magistrate Judge no later than sixty (60) days
21 following the date upon which the event giving rise to the dispute occurred
22 or otherwise became apparent, unless the parties agree otherwise or for
23 good cause shown. Counsel are required to meet and confer regarding all
24 discovery disputes pursuant to the requirements of Local Rules 16.5(k) and
25 26.1(a).

26
27 ³ The Parties shall endeavor to meet and confer on the general criteria/parameters that constitute a
28 representative plaintiff, and further, each Party shall then work in good faith to select
representative bellwether discovery plaintiffs who meet those general parameters.

1 6. On or before **August 26, 2016**, each Party shall provide the Court
2 with their respective, specified number of bellwether cases from which the
3 bellwether trial cases will be selected as is required in the CMO that will be
4 submitted on September 4, 2015, as set forth in paragraph 1, above.

5 7. On or before **September 1, 2016**, the Court will select two (2)
6 cases to serve as the early bellwether trial cases for the Parties subject to this
7 Order and will designate the order of such bellwether trials. The Court shall
8 select the first case tried from the bellwether selections submitted by the
9 PSC. The Court may, in its sole discretion, choose the second case tried from
10 bellwether plaintiffs submitted by either of the PSC or Defendant.
11 Moreover, the plaintiff chosen for the Parties second bellwether trial shall
12 act as a 'back-up' trial plaintiff to the Parties first trial setting. A third
13 bellwether plaintiff will be selected by the Court to further act as a 'back-up'
14 trial plaintiff to the Parties second trial setting. To the extent possible, at the
15 election of the PSC, the first bellwether trial shall involve a Plaintiff who is
16 then living and able to testify in person or by live video feed at trial.

17 8. After the Court selects the first two (2) bellwether trial cases, the
18 parties shall designate additional fact witnesses who may be called as
19 witnesses in such trials on or before **September 15, 2016**. Depositions of
20 such fact witnesses, not previously deposed during the case-specific core
21 discovery, shall take place on or before **October 28, 2016**. No more than
22 three (3) additional case specific fact witness depositions per side shall be
23 permitted without a showing of good cause. Further discovery as to the
24 third bellwether Plaintiff selected by the Court as a 'back-up' will be stayed
25 pending further order of the Court, or as otherwise agreed by the Parties.

26 9. All expert disclosures required by Fed. R. Civ. P. 26(a)(2) shall
27 be served on all parties on or before **October 3, 2016**. Any contradictory or
28 rebuttal disclosures within the meaning of Rule 26(a)(2)(D)(ii) shall be

1 disclosed on or before **November 2, 2016**. Unless otherwise stipulated by
2 the parties, the required expert disclosures shall include an expert report as
3 required by Rule 26(a)(2)(B). If a written report is not required, the
4 disclosure must provide the information required under Rule 26(a)(2)(c),
5 unless the parties agree otherwise. Case specific expert reports, if required,
6 will be dealt with in the CMO that will be submitted on September 4, 2015,
7 as set forth in paragraph 1, above.

8 10. Each expert designation shall include at least two available
9 dates when each expert can be tendered for deposition. The Parties shall
10 work cooperatively and in good faith to provide alternate dates upon
11 request.

12 11. All expert discovery shall be completed by the Parties on or
13 before **December 1, 2016**. "Completed" means that all discovery under
14 Rules 30-36 of the Federal Rules of Civil Procedure, and discovery
15 subpoenas under Rule 45, must be initiated a sufficient period of time in
16 advance of the cut-off date, so that it may be completed by the cut-off-date,
17 taking into account the times for service, notice, and response as set forth in
18 the Federal Rules of Civil Procedure. All disputes concerning expert
19 discovery shall be brought to the attention of the magistrate Judge no later
20 than forty-five (45) days following the date upon which the event giving
21 rise to the dispute occurred or otherwise became apparent, unless the
22 Parties agree otherwise or for good cause shown. Counsel are required to
23 meet and confer regarding all discovery disputes pursuant to the
24 requirements of Local Rules 16.5(k) and 26.1(a).

- 25 a. The parties intend that the limitations on expert discovery set
26 forth in Rule 26 of the Federal Rules of Civil Procedure,
27 including the provision of Rule 26(b)(4)(A)-(D) limiting
28 discovery with respect to draft reports, communications with

1 experts, and depositions of consulting experts, shall apply to all
2 cases, whether pending in state or federal court.

3 12. All other dispositive motions, including those addressing
4 Daubert issues, must be filed on or before **December 30, 2016**. Please be
5 advised that counsel for the moving party must obtain a motion hearing
6 date from the law clerk of the judge who will hear the motion. Any hearings
7 on dispositive motions, including those addressing Daubert issues, must be
8 set on or before **March 1, 2017**. Motions in Limine are to be filed as directed
9 in the Local Rules, or as otherwise set by Judge Battaglia.

10 a. Summary Judgment Motions and/or Daubert Motions need not
11 be filed, and the Court encourages the parties to file meritorious
12 motions rather than motions for "the sake of motions." The
13 Court will consider awarding costs and expenses to any Party
14 who prevails on what the Court considers to be a Summary
15 Judgment Motion and/or Daubert Motion filed against a Party
16 that appears to have been filed for "the sake of motions."

17 b. Questions regarding this case should be directed to the Judge's
18 law clerk. The Court draws the parties' attention to Local Rule
19 7.1(e)(4) which requires that the parties allot additional time for
20 service of motion papers by mail. Papers not complying with
21 the rule shall not be accepted for filing.

22 c. Responses to Summary Judgment Motions and or Daubert
23 Motions, if any, shall be filed on or before **February 1, 2017**.
24 Replies to responses are discouraged by the Court, but if
25 necessary to address new issues raised in a response, may be
26 filed within five (5) days after the response to which it replies
27 upon leave of Court with the proposed reply attached thereto.

28 d. Briefs or memoranda in support of or in opposition to any

1 pending discovery motion shall not exceed twenty-five (25)
2 pages in length without leave of the judge who will hear the
3 motion. No reply memorandum shall exceed ten (10) pages
4 without leave of the judge who will hear the motion. The Court
5 will set special page limits after conferring with the Parties in
6 the future in relation to Daubert issues.

7 13. On or before **August 5, 2016**, the Parties will each designate
8 settlement counsel(s) to be the primary contact(s) for settlement discussions
9 and agree on a Mediator to facilitate settlement negotiations. In the event
10 the parties are not able to agree on a Mediator, they will notify the court
11 jointly on or before **August 19, 2016**, through a single, joint letter requesting
12 the designation of a Mediator by this Court. Such letter shall not exceed two
13 pages in length, and may identify up to three proposed Mediators proposed
14 by each side.

15 14. Beginning on or before **September 21, 2016**, the Parties shall
16 meet and confer at least one time per month to discuss settlement. Initial
17 conferences may take place in person, via videoconference, or by other
18 means at the Parties' discretion, provided the designated Mediator is a part
19 of at least one such communication per month. No later than **November 18,**
20 **2016**, at least one in-person session shall have taken place at a site mutually
21 agreed upon by the Parties. Thereafter, negotiations may continue either in
22 person or as agreed to by the Parties and the Mediator. Settlement
23 conferences shall not include any Defendants other than the Parties to this
24 Order unless otherwise agreed by the PSC and all Defendants in MDL 2452.

25 15. The mediator and settlement counsel for the Parties may, in the
26 Court's discretion, be asked to report to the Court on the status of
27 settlement discussions. Nothing in this Order is intended to limit the
28 Parties' abilities to engage in additional settlement negotiations.

1 16. Furthermore, after expert reports are exchanged and depositions
2 of experts are taken, if any, as well as any good faith Rule 702 motions are
3 filed, the Parties shall meet with the Mediator for purposes of convening
4 focus groups to further settlement negotiations and to attempt to arrive at
5 settlement values. At the conclusion of the focus groups, the Parties shall
6 engage in good faith mediation with the Mediator who shall be given full
7 authority to use every means at his disposal to engage the Parties in an
8 effort to settle the litigation before the first bellwether trial begins. The
9 Parties shall share the expenses of the focus groups and Mediator equally.
10 The focus groups contemplated herein shall be completed on or before
11 **January 13, 2017**; and further, the good faith mediation with the Mediator
12 following the focus groups shall be completed on or before **January 20,**
13 **2017**. Focus groups shall not include any Defendants other than the Parties
14 to this Order unless otherwise agreed by the PSC and all Defendants in
15 MDL 2452.

16 17. A final Mandatory Settlement Conference shall be conducted on
17 **February 3, 2017 at 10:00 a.m.** in the chambers of Magistrate Judge Mitchell
18 Dembin. The appointed Mediator shall attend this mediation session along
19 with Judge Dembin. The Parties shall share the fees and expenses of the
20 Mediator equally. Counsel shall submit **confidential** settlement statements
21 **directly** to Magistrate Judge Dembin's chambers no later than **January 27,**
22 **2017.**

- 23 a. Each party's settlement statement shall set forth the party's
24 statement of the case, identify controlling legal issues, concisely
25 set out issues of liability and damages, and shall set forth the
26 party's settlement position, including the last offer or demand
27 made by the party, and a separate statement of the offer or
28 demand the party is prepared to make at the settlement

1 conference. **The settlement conference briefs shall not be filed**
2 **with the Clerk of the Court, shall be confidential, and shall**
3 **not be shared with or served upon any other Party.**

4 b. All claims adjusters for insured defendants and representatives
5 with complete authority to enter into a binding settlement, as
6 well as the principal attorney(s) responsible for the litigation,
7 must be present and legally and factually prepared to discuss
8 and resolve the case at the Mandatory Settlement Conference.
9 Outside retained corporate counsel shall not appear on behalf of
10 a corporation as the party who has the authority to negotiate
11 and enter into a settlement. **All conference discussions will be**
12 **informal, off the record, privileged, and confidential.**

13 c. The Mandatory Settlement Conference shall not include any
14 Defendants other than the Parties to this Order unless otherwise
15 agreed by the PSC and all Defendants in MDL 2452.

16 18. No Memorandum of Law of Contentions of Fact are to be filed.

17 19. The parties must comply with the pretrial disclosure
18 requirements of Fed. R. Civ. P. 26(a)(3) no later than **February 15, 2017**. The
19 parties should consult Fed. R. Civ. P. 26(a)(3) for the substance of the
20 required disclosures.

21 a. **Please be advised that failure to comply with this section or**
22 **any other discovery order of the Court may result in the**
23 **sanctions provided for in Fed. R. Civ. P. 37, including a**
24 **prohibition on the introduction of designated matters in**
25 **evidence.**

26 20. The parties must meet and confer on or before **February 22,**
27 **2017**, and prepare a proposed pretrial order containing the following:

28 a. A joint neutral statement to be read to the jury, not in excess of

- 1 two pages, of the nature of the case and the claims and defenses.
- 2 b. A list of the causes of action to be tried, referenced to the
- 3 Complaint (and Counterclaim if applicable). For each cause of
- 4 action, the order shall succinctly list the elements of the claim,
- 5 damages and any defenses. A cause of action in the Complaint
- 6 (and/or Counterclaim), which is not listed, shall be dismissed
- 7 with prejudice.
- 8 c. A list, in alphabetical order, of each witness counsel actually
- 9 expects to call at trial with a brief statement, not exceeding four
- 10 sentences, of the substance of the witnesses' testimony.
- 11 d. A list, in alphabetical order, of each expert witness counsel
- 12 actually expect to call at trial with a brief statement, not
- 13 exceeding four sentences, of the substance of the expert
- 14 witnesses' testimony.
- 15 e. A list, in alphabetical order, of additional witnesses, including
- 16 experts, counsel do not expect to call at this time but reserve the
- 17 right to call at trial along with a brief statement, not exceeding
- 18 four sentences, of the substance of the witnesses' testimony.
- 19 f. A list of all exhibits that counsel actually expect to offer at trial
- 20 with a one-sentence description of the exhibit.
- 21 g. A list of all exhibits that counsel do not expect to offer at this
- 22 time but reserve the right to offer if necessary at trial with a one-
- 23 sentence description of the exhibit.
- 24 h. A statement of all facts to which the parties stipulate. This
- 25 statement must be on a separate page and will be read to and
- 26 provided to the jury.
- 27 i. A list of all deposition transcripts by page and line, or videotape
- 28 depositions by section, that will be offered at trial. Over

1 designation is discouraged and may result in sanctions.

2 j. An estimate for the length of trial.

3 The Court encourages the parties to consult with the assigned
4 magistrate judge to work out any problems in preparation of the proposed
5 pretrial order, or to discuss necessary modifications to the above
6 requirements. The Court will entertain any questions concerning the
7 conduct of the trial at the pretrial conference or by later order.

8 21. The proposed final pretrial conference order, including written
9 objections, if any, to any party's Fed. R. Civ. P. 26(a)(3) pretrial disclosures,
10 shall be prepared, served, and submitted to the Clerk's Office on or before
11 **March 8, 2017** and shall be in the form prescribed in and in compliance with
12 Local Rule 16.1(f)(6). Any objections shall comply with the requirements of
13 Fed. R. Civ. P. 26(a)(3). **Please be advised that the failure to file written**
14 **objections to a party's pretrial disclosures may result in the waiver of**
15 **such objections, with the exception of those made pursuant to Rule 402**
16 **(relevance) and 403 (prejudice, confusion or waste of time) of the Federal**
17 **Rules of Evidence.**

18 22. The final pretrial conference is scheduled on the calendar of the
19 **Honorable Anthony Battaglia March 22, 2017 at 9:00 a.m.**

20 23. The trial schedule will begin with the first bellwether trial on
21 **April 3, 2017**, and the second bellwether trial shall begin thereafter on
22 **October 9, 2017.**

23 24. The dates and times set forth herein will not be modified except
24 for good cause shown.

25
26 DATED: _____

27 _____
28 Hon. Mitchell D. Dembin
U.S. Magistrate Judge